IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21300 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ATULKUMAR C SHELAT & 1 - Petitioner(s)
Versus
AHMEDABD MUNICIPAL CORP. THRO.MUNICIPAL COMMISSIONER & 2 - Respondent(s)

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Appearance :
MR NILESH A PANDYA for Petitioner(s) : 1 - 2.
MR MAULIN R RAVAL for Respondent(s) : 1,
MR PR NANAVATI for Respondent(s) : 2,
DELETED for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 20/12/2006

ORAL JUDGMENT

1. With consent of the learned Advocates appearing

for both the sides, the matter is heard today.

2. The short facts of the case are that the respondent No.2 gave advertisement for auction of the shop situated at AUDA Sardarnagar Shopping Centre and thereafter, the public auction was held. The petitioners' offer were accepted for the shop bearing Nos. L-7 & L-8 for an amount of Rs. 18,000/- for two shops. The petitioners thereafter deposited the amount and the possession of the shops were handed over to the petitioners in October 2003. It appears that thereafter, the respondent No.1 Corporation applied seal to the shops in question on the ground that the property tax of the premises is outstanding and no payment is made. The petitioners initially filed Regular Civil Suit No. 1409/06 for challenging the action, which was thereafter withdrawn. The present petition is preferred by the petitioners for the relief inter alia to direct the respondent No.1 to remove the seals applied to the shops of the petitioners bearing Nos. L-7 & L-8 situated at AUDA Sardarnagar Shopping Centre. The petitioners have also prayed to direct the respondent No.2 to reconnect the electric supply to the shops of the petitioners and it is further prayed to direct the respondent No.2 to deposit the taxes in respect to the shops bearing Nos. L-7 & L-8.

3. I have heard Mr. Parmar for Mr. Pandya for the petitioners, Mr. Raval with Mr. Soni for respondent Nos. 1 & Mr. Nanavati for respondent No.2.

4. The learned Advocates appearing for both the sides have agreed that if this Court considers the matter in light of the observations made and the order passed in the present petition on 01.12.2006, their respective clients have no objection. There is no dispute on the point that pursuant to the interim order passed by this Court on 01.12.2006, the seals are removed and the petitioners are in possession of the shops. It is submitted that so far as the electricity connection is concerned, there may not be any problem and it was on account of the earlier application of seals and the insistence by the Corporation, the electricity supply was not available and it has been submitted that if the recovery of the taxation dues are taken care of, the same would serve the purpose of the petitioners.

5. It may be recorded that this Court on 01.12.2006 had passed the following order:

> "1. Leave to delete Respondent No.3, Ahmedabad Electricity Company Limited.
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> 2. Upon hearing Mr.Pandya, learned Counsel for the petitioners, Mr.Raval, learned

Counsel for the respondent Corporation and Mr.Nanavati, learned Counsel for the Ahmedabad Urban Development Authority (hereinafter referred to as the "AUDA"), respondent No.2, it prima facie appears that the petitioners have purchased the shops in auction and the liability up to the date of the auction of the property tax, if any, is required to be borne by AUDA, who has auctioned the property and the petitioners, who are bonafide purchasers of the property cannot be made to suffer.

3. Mr.Nanavati, learned Counsel appearing for AUDA, submitted that as such the premises remained closed and, therefore, there may not be tax liability, whereas Mr.Raval, learned Counsel appearing for the Corporation, submitted that even if such is the position, proper procedure is required to be followed and if proper application is made and the verification is made by the authority, then only the matter can be considered accordingly, but at this stage, it cannot be said that there is no taxation liability. Mr.Raval has produced on record the internal composition of the alleged outstanding amount, which shows that the amount of Rs.5,143/- per shop is towards principal tax amount and the other amount pertains to interest, penalty etc., total Rs.11,335/- for each shop. It, therefore, prima facie appears that when it is a dispute between the Corporation and AUDA, being two statutory bodies, they can properly resolve inter se by following suitable procedure and if ultimately it is not resolved, either party can approach before the High Power Committee for resolving the inter se dispute between the two statutory bodies of the State, but in any case, until such exercise is undertaken, the petitioners who are the bonafide purchasers of the shops neither

can be made to suffer, nor the seal can be allowed to be continued on account of the non-discharge of the liability even if it is of AUDA qua the shops in question.

4. Under the above circumstances, I am inclined to pass the following order:

(a) **RULE**. Mr.Raval, learned Counsel for respondent Corporation and Mr.Nanavati, learned Counsel for AUDA waive service of notice of Rule.

(b) By interim order, it is directed that Respondent No.2 shall deposit provisionally the amount of Rs.5,143/- per shop with Respondent No.1 Corporation within one week from today and upon the deposit, within 48 hours, the seal shall be removed by the officers of the Corporation and the petitioners shall be entitled to make use of the shops in accordance with law.

(c) After the amount is so deposited and the seals are reopened, respondent No.2 may approach before the Corporation for reduction of the tax or interest in view of the alleged circumstances of closure or tax to be paid by the other statutory body or other grounds as may be permissible in law. After the application is made to the Corporation, the same may be decided in accordance with law.

5. **SO to 13.12.2006** for reporting compliance of the deposit and opening of the seal."

6. Thereafter, as the amount was deposited and the seals are removed, the relief prayed by the petitioners qua removal of the seal as such, gets satisfied.

7. So far as deposit of the amount and adjudication of the matter between respondent No.2 for reduction of the taxation amount and the penalty, as the case may be, the directions are already given by this Court in para 4(c), reproduced hereinabove when the order was passed on 01.12.2006.

8. Under the above circumstances, the respondent No.2 may approach to the competent authority of the Corporation for reduction of the tax or the interest in view of the alleged circumstance of closure of the shops in question. If such an application is made by respondent No.2, the same shall be decided by the competent authority of the Corporation as early as possible, preferably within a period of three months from the receipt of the application.

9. In the event the matter is not finalised or there is any grievance by respondent No.2 against the decision of the competent authority of respondent No.1, such dispute would be a dispute between two statutory bodies of the State viz. AUDA, respondent No.2 on the one hand and the Corporation on the other. Therefore, as per the settled legal position, it would be open for respondent No.2 to approach before the High Power Committee already constituted by the State Government for such purpose.

10. In the result, no further orders are required to be passed. Petition stands partly allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs.

(JAYANT PATEL, J.)

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